

**Memorandum of Decision: 01-20200161
Indiana Individual Income Tax
For the Tax Year 2019**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

Individual was not an Indiana resident for the tax year 2019 because he filed the required State of Legal Residence Certificate, federal Form DD 2058, to change his residence or domicile.

ISSUE

I. Indiana Individual Income Tax - Residency.

Authority: 50 U.S.C. § 4001; IC § 6-3-1-3.5; IC § 6-3-1-12; IC § 6-3-1-13; IC § 6-3-2-1; IC § 6-3-2-2; IC § 6-8.1-5-1; *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64 (Ind. 2009); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Income Tax Information Bulletin 27 (January 2014); [45 IAC 3.1-1-21](#).

Taxpayer protests the Department's refund denial of individual income tax for 2019.

STATEMENT OF FACTS

Taxpayer was an Indiana resident in the military service and received W-2 wages, on which tax was withheld for Indiana and local income tax purposes. Taxpayer timely filed a 2019 Indiana Part-Year or Full-Year Nonresident Individual Income Tax Return (IT-40PNR) claiming refunds of the tax withheld. The Indiana Department of Revenue ("Department") determined that Taxpayer was an Indiana resident for 2019 and thus Taxpayer's income was subject to Indiana income tax. As a result, the Department adjusted the return reducing Taxpayer's requested refund claim.

Taxpayer timely protested the refund adjustment and requests a refund of taxes withheld to Indiana. An administrative phone hearing was held. This Memorandum of Decision ensues and addresses Taxpayer's protest of the refund adjustment. Additional facts will be provided as necessary.

I. Indiana Individual Income Tax - Residency.

DISCUSSION

The Department, based on verifiable information, determined that Taxpayer was an Indiana resident for the tax year at issue and that Indiana income tax was due for 2019. Taxpayer, to the contrary, argued that his W-2 income was not subject to Indiana income tax because he did not live in Indiana during 2019. Thus, the issue is, for the tax year at issue, whether Taxpayer's income was subject to Indiana income tax.

As a threshold issue, all tax assessments are *prima facie* evidence that the Department's claim for the unpaid tax is valid; the taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). "[E]ach assessment and each tax year stands alone." *Miller Brewing Co. v. Indiana Dep't of State Revenue*, 903 N.E.2d 64, 69 (Ind. 2009). Thus, the taxpayer is required to provide documentation explaining and supporting its challenge that the Department's assessment is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State*

Indiana imposes a tax "on the adjusted gross income of every resident person, and on that part of the adjusted gross income derived from sources within Indiana of every nonresident person." IC § 6-3-2-1(a). IC § 6-3-2-2(a) specifically outlines what is income derived from Indiana sources and subject to Indiana income tax. For Indiana income tax purposes, the presumption is that taxpayers file their federal income tax returns as required pursuant to the Internal Revenue Code. Thus, to efficiently and effectively compute what is considered the taxpayers' Indiana income tax, the Indiana statute refers to the Internal Revenue Code. IC § 6-3-1-3.5(a) provides the starting point to determine the taxpayers' taxable income and to calculate what would be their Indiana income tax after applying certain additions and subtractions to that starting point.

For Indiana income tax purposes, resident "includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12; see also [45 IAC 3.1-1-21](#). Nonresident is "any person who is not a resident of Indiana." IC § 6-3-1-13.

Nonetheless, when a person is a servicemember, the servicemember's residence or domicile is determined according the federal law. Specifically, 50 U.S.C. § 4001(a)(1) provides, "A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders." To further explain, the Department's Income Tax Information Bulletin 27 (January 2014), 20140129 Ind. Reg. 045140013NRA, in relevant part, states:

RESIDENCY

Military personnel who enter the armed forces as Indiana residents remain legal residents of Indiana regardless of duty station until official action is taken to change their legal residence. This can be accomplished by filing a State of Legal Residence Certificate, Form DD 2058, with the military personnel office

In this instance, Taxpayer stated that he bought a house in Florida and properly changed his residence to Florida. He provided the closing document on the home showing he bought the house December 2018. In addition, Taxpayer provided a properly filed "State of Legal Residence Certificate, Form DD 2058" to properly change his residence or domicile for the tax year; therefore, his residence or domicile changed from Indiana. Taxpayer provided sufficient documentation to show he was not an Indiana resident for 2019 and is entitled to the original refund requested.

Given the totality of the circumstances, the Department agrees that Taxpayer met his burden of demonstrating that he was not Indiana resident for the tax year at issue.

FINDING

Taxpayer's protest of the residency issue is sustained.

August 3, 2020

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